entertain of this poem, and our gratitude to the author of it. There are some folks, we know, who pretend to think it very tame in us that we do not cut up every author who falls in our way, till we can see his bones; and who charge us with loading all American writers with thick and indiscriminate praise, for no other reason than because they are American. In answer to this, we will merely remark, that we are not blind to the miserable stuff, which is constantly thrown off by the presses of our country, but that it is not often we feel any desire to soil our hands with it; secondly, that we have no compunction in confessing, that we do hail, with infinitely more delight, a good work which is produced by native genius, than one of equal quality which is sent to us from the land of our ancestors, because we stand in lamentable need of such things, and the English have a plenty of them, and moreover because we are Americans ourselves. Our third remark is, that whenever we think a work is good, whether it be poetry or prose, we shall be sure to say so.

Mr Hillhouse's Hadad is an ornament and bright addition to the literature of our country. We can send it abroad without a blush or an apology; not as being of the highest order of excellence, but as a sample of American poetry, full of beauty, dignity and interest. We read it with pleasure, and we came to its last page with regret.

ART. III.—*Reports of Cases, argued and determined in the Supreme Judicial Court of the State of Maine.* By SIMON GREENLEAF, Counsellor at Law. Vol. II. Containing Cases of the years 1822 and 1823. Hallowell. 1824.

'THE attendance of courts,' says Lord Bacon, 'is subject to four bad instruments; first, certain persons that are sowers of suits, which make the court swell and the country pine; the second sort is of those that engage courts in quarrels of jurisdiction, and are not truly "amici curiæ," but "parasiti curiæ," in puffing a court up beyond her bounds, for their own scraps and advantages; the third sort is of those that may be ac-

counted the left hands of courts; persons that are full of nimble and sinister tricks and shifts, whereby they pervert the plain and direct courses of courts, and bring justice into oblique lines and labyrinths; and the fourth is the poller and exacter of fees; which justifies the common resemblance of the courts of justice to the bush, whereunto while the sheep flies for defence in weather, he is sure to lose part of the fleece.' Had the learned chancellor continued to our own time, he might have found at least one more subject for his grave wit, in the multitude and increase of law reports.

To say nothing of the luxuriance of the English press in this department, our own country has become the field of so much legal disputation, and, consequently, of judicial decision, that it requires no despicable share of money and leisure, to supply our libraries with volumes, that publishers are continually laying before us, or to keep pace with the emphatically '*written* reason,' which they tacitly demand of us to examine as well as to purchase. But hard as it is to pay so dear for what we may call technical books, and which the world cares so little about, we want our own reports.

Our age is not peculiar in its complaint of the increase of law books. Lord Mansfield, in the middle of the last century, referred to the multiplication of this species of human industry with infinite complacency. His remark was, that though the increase was great, it did not increase the quantity of necessary reading; as the perusal of the new, frequently superseded the necessity of that of the old production. If this remark of his Lordship was true in his own time, it has certainly gained force since the period his splendid intellect adorned the British bench,—and whether he referred to books of reports or elementary works, all of our age, and especially those of our countrymen, who are destined for the bar, will feel the peculiar pertinency and meaning of the observation. Indeed, in this country, where there is a score of independent sovereignties, each supporting its own system of judicature, and more than half of them their reporters of decisions, there is consolation in the thought, that the plan of systematising the science, and reducing the disjointed and rambling principles of the system, to the subjection of essays and law treatises, has gone so far; and

whether done by Englishmen or Americans, they both deserve the thanks of the profession. In this country, therefore, we may well entertain a special regard for all elementary works of the law. And the value of such works, for the concentrating character which they are intended to possess, is yearly increasing with us. It is not a matter of little surprise, that twentyfive years ago, the best library of American reports that could be summoned by money or magic, within the circumference of the Union, might have been borne the circuits in a portfolio, while now, there are hardly less than two hundred within our territories. Valuable, then, must be such collections of legal principles, and dissertations upon them, while they serve to keep sacred and distinct the doctrines they discuss; and doubly valuable, when by the patience, and industry, and investigation of their authors, we find decisions upon those principles, collected from different parts of our country, and the reasons of those decisions brought into one comprehensive view, and confronted with the opinions of those, whose fame is in the Year Books, and who may almost be said to have fixed the immutable axioms of the law.

Numerous, however, as are the books of reports that are daily soliciting our attention, many of them are the vehicles of decisions, interesting and important in public estimation, so that, while we need not fear, with Mr Justice Buller, the 'shipwreck of the law' from the intervention of 'hard cases,' we may well hope for the safety of it in those high authorities, which our own time has seen erected like fortifications around its principles. High political excitements, and political emergencies, give occasion for legal dilemmas; and though we should be slow to believe, that any situation of things would raise questions between parties, that could hide the old 'landmarks' from the penetration of our learned jurists and judges, still the opinion may be ventured, that under circumstances of national tranquillity the science advances with surer, because soberer steps, and that we shall hereafter be induced to point to our peaceful times, as the periods of the most important decisions, and the highest juridical learning, as developed in our books of authorities. As it is, the principles of the common law are becoming every day, from such frequent application, better understood, and our judicial character more effectually established.

The character of an accomplished reporter is no ordinary acquirement. To win this reputation requires legal penetration and acumen, as well as a familiarity with principles and forms, and an adroitness in reference and application. A faithful and able reporter of judicial reasoning, gives a dignity and weight to the tribunal under whose adjudications he may sit. The method of compressing the arguments of counsel, which Mr Greenleaf has in some instances carried to an extreme, has been matter of complaint in the mouths of some men, too eminent in the walks of judicature to need such arguments at all. But we are sure, that neither the rights of parties, nor the reputation of the law, is jeoparded by such a course. Judges have all the advantages desirable, from listening to the arguments *in extenso*, and we must be content to hope, that students will go to the fountains, to which the books of decisions will so frequently direct them.

Our readers need scarcely be told, that this is not the first time that Mr Greenleaf has been before the public in a legal character. His 'Collection of over-ruled Cases,' which appeared in 1821, bore good testimony to his industry, and entitled him to high credit, as well as to the thanks of the profession. The present is the second volume of the decisions of the Supreme Judicial Court of Maine, which has appeared under his auspices, since the separation of that State from Massachusetts. Mr Greenleaf is of the order of compendious reporters. He is lucid and direct in his statement of cases; his arguments of counsel are arranged with logical exactness, and a well conceived brevity, which give us their outline well defined, and yet without any sinuosities. He is happy in his discrimination of the *onus* of the reasoning, and his consequent exposition of it. Mr Greenleaf is always concise, while throughout he never fails to be just; and this is no small praise, when the longest, or most important case in the volume, will be found to allow not above two pages to the arguments of counsel.

The present volume contains about one hundred cases, within the limits of little more than four hundred pages. Many of them are important as well as interesting. The book indicates great industry in the Court, and the decisions bear marks of precision and emphasis, which give to the ac-

curate and intelligent opinions of Chief Justice Mellen the character of strong authority. The opinion of the Court is delivered, in almost every instance, by the presiding Judge.

Though a plain case, the opinion of the Court in *Frothingham* vs *Dutton* deserves notice. The defendant in that action did not disclose the matter of his defence, but tendered issue, and claimed trial by jury, yet for withholding such disclosure, his right was denied, and he was called. On bringing the cause before the Supreme Court, upon summary exceptions pursuant to the statute, the Chief Justice observed, 'under these circumstances we are of opinion, that the defendants ought not to have been defaulted. They had a *constitutional* right to a verdict of the jury, and to call on the plaintiff to *prove* before them the demand, on which he founded his action.' The default was set aside. Now, however excellent a thing a *code of the Bar*, or the usage of a Court may be, yet when any of the provisions of the one, or the nature of the other, may go to impair a constitutional privilege, few will deny that, by such decisions, they should be virtually abolished. A Court can hardly be supposed to judge of a case, until it is laid before them, and if the party cannot make one out, it is at his own risk that he undertakes to do it. Charles Butler has said, 'That the right of interpretation should be vested in Judges, no reasonable person can deny; but to what extent it should be allowed, or, in other words, to ascertain the exact point, where judicial interpretation should stop, and legislative interpretation intervene, is a question of extreme difficulty.' The observation of this learned lawyer may be very true; but a case of difficulty has not arisen, when we are merely called on to solve the question, 'is or is not the trial by jury our right, whenever we choose to demand it?' Better, at once, that we have a French jury, such as that distinguished jurist has represented to us, and better that interpretation were declared by *arrêts*, than that such an invaluable privilege should for a moment be jeoparded.

The case of 'The Proprietors of the Kennebeck Purchase *vs* Laboree & als,' which is the most elaborate authority in the book, is one of more than common consequence, as well from the doctrine of *disseisin*, which is involved in it, as from

the judgment that is passed upon the section of the statute of March 1821, on which the defence is founded. That section contained a provision, declaring in substance, that in all real actions then pending, or which should afterwards be brought, it should not be necessary for barring the action, that the premises defended should have been surrounded by fences; but that, if the possession of the tenant, or those under whom he claimed, had been such as comported with the ordinary management of a farm, and satisfactorily indicative of such an exercise of ownership, as is usual in the improvement of it by the owner, it should be sufficient; thus changing the principles of the law of disseisin, in regard to past transactions, and virtually taking away the rights of the proprietor. The opinion is long, and ably supported by numerous authorities and strong reasoning. We can here introduce but a few passages from it.

The decision has declared that portion of the law *retrospective* and unconstitutional. After some preliminary observations, the Chief Justice goes on to say;

'The doctrine of the common law on this subject seems to be plain and well settled; a possession must be adverse to the title of the true owner, in order to constitute a disseisin; the possessor must claim to hold and improve the land for his own use and exclusive of others.' 'We are inclined to believe, that upon examination it will be found, that the principles of the common law are applied in England and New York with more strictness as regards the *occupant* of the land, than they have ever been in Massachusetts or with us, upon the doctrine of disseisin; at least so far as relates to the presumption of law in reference to the intentions of the possessor.' 'The facts relied on to prove the possession exclusive' 'must, however, be such, as at once to give notice to all, of the nature and extent of the possessor's improvement and claim.' 'It must be such an open and visible occupancy, that the proprietor may at once be presumed to know the extent of the claim and usurpation of him, who has intruded himself unlawfully into his lands, with an intent to obtain a title to them by wrong.'

These are plain principles, and well known; nor are they introduced for their novelty, but merely for the directness of their statement, and as preparatory to the train of reasoning which leads to the decision.

'According to existing laws,' says the Chief Justice, 'deeds of conveyance of real estate must be *under seal.* Such deeds, to pass

a *fee simple estate*, must contain certain legal terms; viz.—the conveyance must be to the grantee and his *heirs*. To entitle a widow to dower in her deceased husband's estate, he must have been seized of it *during the coverture*. Now if our legislature should at the next session pass a law, declaring that all deeds of conveyance of real estate, that had *before that time* been executed, or should in future be executed, should be considered and adjudged sufficient in law to pass the estate therein described, in fee simple, though such deeds were not under seal, and contained no words of inheritance; and that a widow should, in all cases be entitled to dower in her deceased husband's estate, where he had died, or might in future die, seized of such estate, at any time *before* as well as *during* the coverture;—will the principles on which a free government is founded—will the principles of common honesty and justice, sanction such a law, so far as to give it a *retroactive* effect, and thereby disturb, impair and destroy the vested rights of those, who had become the owners of the estates under *then* existing laws?'

'Let us further suppose that the action had not yet been tried, but was to be tried at this term. Let us further suppose that the legislature, at their last session, had passed a law declaring that in all actions, then *pending or that might be commenced after the passing of such act*, no adverse, notorious, and exclusive possession of the demanded premises, although surrounded with fences, should be a bar and constitute a good defence in such action; unless such possession and disseisin has, or shall have been continued for *forty* years, next before the commencement of such action. Now would the tenant, or any other man, understanding and respecting principles, consider such a law constitutional? On the contrary, would it not be at once pronounced unjust and void? If such an act of the legislature could be sanctioned, not only the tenant, in the circumstances we have supposed, would be deprived of his estate by a destruction of vested rights, but a large class of citizens, similarly situated, would suffer under similar deprivations. The more the principle of the section in question is examined, the more distinct become its objectionable features.' 'In a word, the whole section taken together appears to have been enacted with a view, and for the purpose, of abolishing the distinction, well known to have then existed between a possession *under a claim of title on record*, and a possession *without* any such claim or pretence of title.'

Again he observes;

'The section is certainly retrospective as well as prospective. It professes to establish principles by which causes then pending, as well as those which might in future be commenced, should be decided. It professes to operate on *past* transactions, and to give

to facts a character, which they did not possess at the time they took place; and to declare that in the trial of causes *depending on such facts*, they shall be considered and allowed to operate in the decision of such causes, according to their *new character*. It professes to settle rights and titles depending on laws, as they existed for a long series of years *before* the act was passed, by new principles, which for the first time are introduced by its provisions. It professes to change the nature of a disseisin, and thereby subject the true owner of lands to the loss of them, by converting into a disseisin, by *mere legislation*, those acts which, at the time the law was passed, did not amount to a disseisin. It professes to punish the rightful owner of lands, by barring him of his right to recover the possession of them, when, by the existing laws, he was not barred, nor liable to the imputation of any *laches*, for not sooner ejecting the wrongful possessor.'

After illustrating his subject by a few examples, the Chief Justice concludes in the following independent strain.

'It is always an unpleasant task for a judicial tribunal, to pronounce an act of the legislature in part or in whole unconstitutional. We agree with the Supreme Court of the United States, in the case of *Fletcher* vs *Peck*, that "the question whether a law be void for its repugnance to the constitution, is, at all times, a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. But the Court, when impelled by duty to render such a judgment, would be unworthy of its station could it be unmindful of the obligation which that station imposes." We cannot presume that the legislature, which enacted the law, considered the section in question, as violating any constitutional principle, or in any manner transcending their powers. Be that as it may, the oath of office, under which we conscientiously endeavor to perform our duties, imposes upon us as solemn an obligation to declare an act of our legislature *unconstitutional*, when, upon mature deliberation, we believe it to be so, as it does to give prompt and full effect to all *constitutional* laws, in the administration of justice.'

ART. IV.—*Demosthenis Opera, ad Optimorum Librorum Fidem accurate Edita.* Lipsæ. Excudit Car. Tauchnitz.

BY the great majority of the literary world, from his own time to the present, Demosthenes has been considered as unsurpassed, if not unequalled in eloquence. While, how-